

On motion of Mr. Tankersly, the Senate adjourned until to-morrow morning at 10 o'clock.

WEDNESDAY, February 3, 1858.

The Senate met pursuant to adjournment—Prayer by the Chaplain—roll called, quorum present.

The Journal of yesterday was read and adopted.

A message was received from the House, informing the Senate that the House had passed the following bills, originating in that body:

A bill supplemental to an act to fix the time of holding courts in the 14th Judicial District; and

A bill to re-organize the 16th Judicial District, and define the time of holding courts therein.

And the following bills originating in the Senate:

A bill to extend the time for letting the contracts for the improvement of Galveston and St. Louis Bays, &c., &c.;

A bill to create the county of Chambers; and

A bill to incorporate the Nash Iron, Steel and Copper Manufacturing Company in Cass county.

Also that the House has concurred in the amendments of the Senate to the following bills originating in the House:

A bill supplemental to an act to provide for the support of schools, approved Aug. 29th, 1856;

A bill for the relief of the heirs of William Freer;

A bill for the relief of Jacob H. Sheppard;

A bill for the relief of pre-emption settlers, under the acts of Jan. 22d, 1845, Feb. 7th, 1853, and Feb. 13th, 1854; and

A bill to amend an act to organize the 17th and re-organize the 2d Judicial District.

And that the House had receded from its amendments to a Senate's bill to ascertain what land certificates had been illegally issued by county courts in Peters' colony, and to provide for issuing patents upon such as had been legally issued, &c.

And to a Senate's bill to incorporate the Columbus, San Antonio and Rio Grande Railway Company.

And had adopted the report of the committee of conference upon a bill to purchase a site for the permanent location of the Deaf and Dumb Institute, and a bill to purchase the Alamo Monument.

And that the House had passed the joint resolution of the

Senate to authorize and require the Governor and Comptroller to contract for re-modeling the roof and re-covering the Capitol and old Land Office, with an amendment.

Mr. Guinn made the following report :

The committee on Claims and Accounts have considered a bill for the relief of Abner C. Davis, and find, from the records of the Court of Claims, that Abner C. Davis enlisted in Capt. Wood's company A., 1st regiment Texas volunteers, on the 27th of February, 1836, under the command of Col. Burleson. And that a bill has passed the present Legislature, giving him 1280 acres bounty, 640 acres special bounty, and 640 acres donation for dying in the service in the summer of 1836. The proof is clear that he died in the service in 1836. The committee think, under the law, that there is no doubt but that he was entitled to 1280 acres for being enlisted during the war. His dying in the service could not deprive him of his land bounty ; but, under the law, the money pay stopped as soon as he died or was killed. This bill is to give him his full quantum of land under his enlistment, and further, in consideration of all the money due him for said service. The committee submit these facts and recommend the passage of the bill.

On motion of Mr. Throckmorton, the rule was suspended, bill and report taken up, read, and bill ordered to be engrossed.

Rule further suspended, bill read a third time and passed.

Mr. Martin made the following reports :

The committee on Private Land Claims have considered a bill for the relief of John E. Scrimpf, and find the proof ample that he came to Texas and became a citizen prior to Jan. 1st, 1842, and has remained in the country ever since. The committee, therefore, instruct me to recommend the passage of the bill.

On motion of Mr. Tankersly, the rule was suspended, bill read a second time and ordered to be engrossed.

Rule further suspended, bill read a third time and passed.

The committee on Private Land Claims have considered a House bill for the relief of Elizabeth Rice, and find that she immigrated to Texas prior to 1842, and was the head of a family. She is clearly entitled, and the committee instruct me to recommend the passage of the bill.

The committee on Private Land Claims have considered a bill for the relief of the heirs of Jesse Simmons, and direct me to report : that, from the evidence of Ben. McCulloch

and B. L. Ham, it is clear that Simmons immigrated to Texas in the Fall of 1836; that he was a man of family; joined the army immediately after his arrival, and they believe died in the service. From the statement of Henry E. McCulloch, it is clear that Simmons' family never removed to Texas; consequently, he is only entitled to a single man's head-right, which, at the time of his immigration, was 640 acres, and, as he died in the service, he is also entitled to a donation of 640 acres of land. It is also evident that he is entitled to bounty land for his services in the army; but the committee have not been able to ascertain any correct data as to the term of his enlistment, and, consequently, are not able to designate the amount of bounty land which should be allowed him. I am, therefore, directed to report a substitute, giving him 640 acres as a head-right, and 640 acres as a donation for having died in the service, and to recommend the adoption of the substitute and passage of the bill.

Mr. Herbert made the following report :

The committee on Roads, Bridges and Ferries, have considered a bill to authorize the Tellico Manufacturing Company to construct and maintain a toll-bridge across the Trinity river, and instruct me to recommend its passage.

On motion of Mr. Walker, the rule was suspended, bill read second time and ordered to be engrossed.

Rule further suspended, bill read a third time and passed by the following vote :

YEAS—Messrs. Caldwell, Erath, Fall, Graham, Grimes, Guinn, Herbert, Lott, McCulloch, Martin, Maverick, Paschal, Pedigo, Pirkey, Potter, Russell, Scarborough, Shepard, Stockdale, Tankersly, Taylor of Cass, Throckmorton, Truitt, Walker, Whaley and Wigfall—26.

NAY—Mr. Taylor of Fannin—1.

Mr. Paschal made the following reports :

The committee on Internal Improvements have considered a bill declaring the intent, meaning and true construction, of the 8th section of an act passed Aug. 1st, 1856, to encourage the improvement of the navigation of the rivers of the State, &c., &c., and instruct me to recommend its passage. It is the opinion of the State Engineer that the amount here appropriated is absolutely necessary to carry on the work already contracted for on this river, and it is also the opinion of the majority of the committee that the bill makes no appropria-

tion, but only explains and declares the true meaning of the 8th section of the act above referred to.

The committee on Internal Improvements have considered a bill supplemental to an act to incorporate the Sabine and Rio Grande Railroad Company, approved Feb. 6th, 1854, and instruct me to recommend its passage, with the following amendments :

Add the following section :—

Sec. 3. That the said company may construct their said road on the most practicable route by way of San Antonio to the Rio Grande, without regard to the intermediate points mentioned in the second section of the charter ; and that said company may form a connection with any other railroad west of Trinity river, on the same terms and conditions of the general railroad law of the State ; provided, that, if said company should meet with any such road, it shall not be allowed to construct another road parallel with that with which the connection is made. Nor shall said company be allowed to construct its road parallel to any other road being constructed under a charter heretofore granted, at a distance nearer than thirty miles ; and further provided, that said company shall be required to have subscribed by the 6th day of February, 1860, as much as six hundred thousand dollars of its capital stock, and as much as five per cent. thereof actually paid in.

The committee on Internal Improvements, having considered the great importance of inducing the construction of the contemplated national road to connect the waters of the Mississippi and Pacific, to pass through the limits of Texas ; as a means of obtaining this object, have instructed me to report the accompanying bill and recommend its passage. An inducement is held out to the Memphis and El Paso, and the Southern Pacific railroad companies to form a connection east of the longitude of Fort Graham, and to unite in the construction of a common trunk to the Rio Grande by securing to such common trunk a reserve, along the trunk, of sixteen sections of land. East of the point of juncture each company must construct its own road. The Memphis and El Paso road connecting with a road entering Texas near Fulton, from Memphis or Cairo ; and the Southern Pacific to connect with the proposed road, to enter Texas near Shreveport, from a point on the Mississippi river near Vicksburg. It will be seen that these two roads will accommodate different sections of

the country, and by the construction of a road from a point on the Sabine river where it is proposed, the New Orleans and Opelousas road will touch, to connect with either or both of the above roads, at or east of the point of juncture, and the extension of the Houston and Texas Central railroad to the northern limits of Texas. Very few short trunks would be required to accommodate all the people east of the Brazos river. The bill is so guarded that no more than sixteen sections of land can be granted for the common trunk, in case said roads should connect ; and in case of a failure to connect the act ceases to have force and effect.

“A bill supplemental to an act incorporating the Texas Western Railroad Company, approved Feb. 16th, 1852, which name was changed to the Southern Pacific Railroad Company by an act passed by the Legislature on the 16th day of August, 1856 ; read first time.

On motion of Mr. Taylor of Cass, the rule was suspended, bill and report taken up, read, and made the special order for to-morrow, at 11 o'clock A. M.

Mr. Herbert introduced a bill to amend an act defining the office and duties of Sheriffs, passed May 1846 ; read first and second times and referred to the committee on the Judiciary.

Mr. Potter introduced a bill to regulate the Public Printing ; read first time.

On motion of Mr. Potter, the rule was suspended, bill read second time and ordered to be engrossed.

Rule further suspended, bill read a third time and passed.

A message was received from the House informing the Senate that the House had passed—

A Senate's bill supplemental to an act to provide for the incorporation of towns and cities ; and

A bill to provide for the organization of the State Lunatic Asylum, and for the care and maintenance of the Insane ; and

A Senate's bill supplemental to and amendatory of an act to establish a Code of criminal procedure, approved August 23th, 1856, with amendments.

And that the House had reconsidered the vote passing a Senate's bill to create the county of Chambers, and requested the return of the bill to that body ; which request was complied with.

On motion of Mr. Britton, a bill to relinquish the right o

the State to certain lands therein named, was taken up, read, and ordered to be engrossed by the following vote :

YEAS—Messrs. Britton, Caldwell, Erath, Herbert, Hyde, McCulloch, Maverick, Paschal, Pedigo, Pirkey, Potter, Scarborough, Shepard, Stockdale, Tankersly, Taylor of Cass, Taylor of Fannin, Throckmorton and Wigfall—19.

NAYS—Messrs. Fall, Graham, Grimes, Guinn, Lott, Martin, Russell, Taylor of Houston, Truitt, Walker and Whaley—11.

On motion of Mr. Britton, rule further suspended, bill read third time and passed.

On motion of Mr. Potter, the substitute of the House for a Senate's bill supplemental to and amendatory of an act to establish a Code of criminal procedure, approved 26th of August, 1856, was taken up and referred to the committee on the Judiciary.

Mr. Graham introduced a bill to authorize Thomas P. Ochiltree to practice law in the Courts of this State ; read first time.

On motion of Mr. Graham, the rule was suspended, and bill read a second time.

On motion of Mr. Stockdale, the bill was amended as follows :

"Provided that the only object of this law is to remove the disability of minority, and that the said Ochiltree shall, before he is permitted to practice law, obtain a license according to the requirement of the general law upon the subject." Adopted.

The bill was then ordered to be engrossed.

On motion of Mr. Graham, the rule was suspended, bill read a third time and passed.

Mr. Taylor of Houston made the following report :

The committee on Enrolled Bills have examined the following bills, to-wit : An act to amend the first section of an act to create the county of Palo Pinto ; an act to incorporate the Texas Baptist Publication Society ; an act donating to the county of Palo Pinto three hundred and twenty acres of land ; an act to extend the time of locating and returning to the General Land Office certificate No. 70, issued to the Buffalo Bayou, Brazos and Colorado Railway Company, and other certificates hereinafter mentioned ; an act further regulating proceedings in the District Courts ; an act authorizing a change of certificate in a certain case ; an act granting a pension to Juana Navarro Alsbury ; an act defining the 7th

Judicial District, and the time of holding Courts therein; an act defining the time of holding Courts in the 18th Judicial District; an act to incorporate the Nash Iron, Steel and Copper Manufacturing Company in Cass county; an act to provide for the permanent location of the county seat of Angelina county; an act to define the jurisdiction over certain tide water and islands therein named; and, an act to amend an act entitled an act to organize the 17th and re-organize the 2d Judicial Districts, and define the times of holding Courts therein, passed Sept. 1st, 1856,—and find all of said bills correctly enrolled, properly signed, and this day presented to the Governor.

On motion of Mr. Taylor of Cass, the Senate adjourned until 3 o'clock P. M.

3 O'CLOCK, P. M.

The Senate met—roll called—quorum present.

On motion of Mr. Pirkey, a bill to amend an act to incorporate the Clarksville and Mount Pleasant Turnpike Company, was read and ordered to be engrossed.

Rule suspended, bill read a third time and passed by the following vote:

YEAS—Messrs. Burroughs, Caldwell, Erath, Graham, Grimes, Guinn, Herbert, McCulloch, Maverick, Pedigo, Pirkey, Potter, Russell, Scarborough, Shepard, Stockdale, Tankersly, Taylor of Cass, Taylor of Houston, Throckmorton, Truitt and Walker—22.

NAYS—None.

A joint resolution authorizing and requiring the Governor and Comptroller to contract for re-modeling the roof and re-covering the Capitol and old Land Office, with amendments from the House, was taken up, read, and the amendments concurred in by the Senate.

By leave, Mr. Shepard submitted the following correspondence, which was ordered to be spread upon the Journals of the Senate:

INDEPENDENCE, Washington Co., }
January 26, 1858. }

MR. J. WILLIE:

Dear Sir:—It is with pleasure that I am enabled to present, through you, to the State of Texas, a portrait of the

Hon. A. S. LIPSCOMB, as a tribute of respect, and as a token of the profound regard I entertain for the memory of one who was my friend. I wish you, on my behalf, to present it to this Legislature, (with such remarks as you may think proper to make,) to be hung in the room where the Supreme Court is holden in Austin—if it seems respectful; otherwise, you will retain it in your possession. That is a matter of which you will be the judge. No remuneration is desired: I request you to resist any attempt for the same. The picture is boxed and directed to you.

Respectfully yours,

ALEXANDER FORD.

AUSTIN, Feb. 2, 1858.

Hon. C. B. SHEPARD:

Dear Sir:—Mr. ALEXANDER FORD, an accomplished artist, has executed a portrait of the late ABNER S. LIPSCOMB, and has transmitted it to this place, to be presented to the State. He has also addressed me a letter, requesting that I shall, in some suitable manner, make known his desire that the Legislature will accept the gift. The letter, which accompanies this, gives evidence of that unobtrusive, modest worth, which distinguishes the man of genius. His high admiration of the character of the deceased Jurist, and the sincere regard which he entertains for the memory of a friend, are the motives which prompt him to make the donation. You represent, in the Senate, the County which was, for so many years, the residence of Judge LIPSCOMB, and by the people of which his virtues are so highly appreciated. I have, therefore, taken the liberty of communicating to you the wishes of Mr. FORD, that you may, in such manner as you deem appropriate, tender the gift to the State.

I am, very respectfully and truly, yours,

JAMES WILLIE.

Mr. Shepard introduced a joint resolution relative to the portrait of the late Abner S. Lipscomb; read first time.

On motion of Mr. Shepard, the rule was suspended, bill read second time and ordered to be engrossed.

Rule further suspended, bill read third time and passed.

On motion of Mr. Guinn, a bill supplemental to an act supplemental to and amendatory of an act to ascertain the legal claims for money or lands against the State, passed Aug.

1st, 1856, approved Jan. 16th, 1858, was taken up and read second time.

On motion of Mr. Erath, the bill was amended by adding, after "therefor," in Sec. 1, line 5—"or who may have lost such warrant, and, on application for a duplicate, cannot prove the existence of the original by any other than his own oath."

The bill was then ordered to be engrossed.

On motion of Mr. Erath, the rule was suspended, bill read a third time and passed.

Mr. Russell, Chairman of the committee on Engrossed Bills, reported the following bills correctly engrossed, viz :

A bill more particularly to declare and define the homestead exempt from forced sale ;

A bill to provide for an additional supply of Texas Reports;

And a joint resolution to authorize the Comptroller to pay over to the Treasurer of the San Antonio and Mexican Gulf Railway Company certain funds belonging to said Company.

On motion of Mr. Hyde, a bill for the relief of Teresa Highsmith, was taken up, read, and passed to a third reading.

On motion of Mr. Caldwell, the rule was suspended, bill read a third time and passed by the following vote :

YEAS—Messrs. Caldwell, Grimes, Herbert, Hyde, McCulloch, Maverick, Paschal, Pirkey, Potter, Scarborough, Shepard, Stockdale, Tankersly, Taylor of Houston, Throckmorton, Truitt, Whaley and Wigfall—18.

NAYS—Messrs. Burroughs, Erath, Fall, Graham, Guinn, Lott, Russell and Walker—8.

A message was received from the Governor transmitting the following communications :

EXECUTIVE OFFICE, }
FEBRUARY 3, 1858. }

Gentlemen of the Senate,

and House of Representatives :

I return without my approval an act for the relief of Mandred Wood.

The best information which I have been able to obtain from the Land Office, is, that the certificate of Mandred Wood was issued for one-third of a league of land, but was recommended by the Traveling Board for only one-fourth of a league. This bill proposes to make up the difference between the one-third and the one-fourth of a league, which, I am of the opinion, the Legislature has not the right to do,

under the 2d section of Article 11 of the Constitution, which is in the following words: "The District Courts shall be opened, until the first day of July, One Thousand Eight Hundred and Forty-Seven, for the establishment of certificates, for head-rights not recommended by the commissioners appointed under the act to detect fraudulent land certificates, and to provide for issuing patents to legal claimants; and the parties receiving shall produce the like proof, and be subject to the requisitions which were necessary and were provided by law to sustain the original application for the said certificates, and all certificates above referred to, not established or sued upon before the period limited, shall be barred, and the said certificates, and all locations and surveys thereon, shall be null and void, and all re-locations, made on such surveys, shall not be disturbed until the certificates are established as above directed."

It is clear, from the language of this clause of the Constitution, that the only remedy of the party, if the commissioners failed to do him justice, was by an action in the District Court, prior to the first day of July, 1847. The failure of the commissioners to recommend the claim for one-third of a league, and stipulating a different and less sum, cannot be regarded in any other light than a rejection of the difference between the recommended and unrecommended certificates.

H. R. RUNNELS.

EXECUTIVE OFFICE, }
FEBRUARY 3, 1858. }

Gentlemen of the Senate,

and House of Representatives:

I return, without my signature, to the Senate in which it originated, an act for the relief of George R. Rains. According to the information obtained from the Land Office, the merits of the case stand in the same relation as that for the relief of Mandred Wood, which has been returned to you for reconsideration, and is liable to the same objections.

H. R. RUNNELS.

Mr. McCulloch moved to take up the resolutions concerning the arrest of General Walker by Commodore Paulding, and to make them the special order for to-morrow evening, at 7 o'clock; carried.

On motion of Mr. Russell, the Senate adjourned until to-morrow morning 10 o'clock.